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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,895	07/24/2001	GERALD ANTON OFNER	046-7001.30	3043

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YOUNG & THOMPSON  
745 SOUTH 23RD STREET 2ND FLOOR  
ARLINGTON, VA 22202

EXAMINER

FINEMAN, LEE A

ART UNIT	PAPER NUMBER
2872	

DATE MAILED: 01/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	OFNER, GERALD ANTON
Examiner	Art Unit Lee Fineman 2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 21 November 2002.  
 2a) This action is FINAL. 2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-61 is/are pending in the application.  
 4a) Of the above claim(s) 6-61 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-5 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 24 July 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.  
 12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.  
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.  
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.  
 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election of Species I in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 6-61 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

***Priority***

3. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Austria on 30 November 1999. It is noted, however, that applicant has not filed a certified copy of the A 2016/99 application as required by 35 U.S.C. 119(b).

Receipt is acknowledged of Austria application A1994/99, filed 24 November 1999, submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Drawings***

4. The drawings are objected to because of the informalities indicated on the attached "Notice of Draftperson's Patent Drawing Review," PTO-948. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

5. The disclosure is objected to because of the following informalities:

Page 1, line 4 refers to "claim 1" which is inappropriate and should be removed.

Reference to a general claim number could lead to confusion as claim 1 may change.

On page 19, line 20, "6" should be --60--.

Appropriate correction is required.

***Claim Objections***

6. Claims 1-5 are objected to because of the following informalities:

Claim 1 recites the limitations "the focal length" in line 4, "the distance" in line 5, "the object" in line 6, "the magnification factor" in lines 6-7, "the parallax" in line 8, "the beam path" in line 11, "the beam paths" in lines 12-13, and "the angle" in line 12. There is insufficient antecedent basis for these limitations in the claim. The dependent claims inherit the deficiencies of the claims from which they depend.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the beam path" in line 11, and "the beam paths" in lines

.12-13. It is unclear whether the beam path in line 11 is one of the beam paths in lines 12-13 and if so which one.

Claim 1 recites two “objective lens (70)” and “adjustable optical elements (11)” where the reference numbers refer to elements in two different drawings. It is unclear whether the objective lenses are a separate element from the adjustable optical elements or the same element.

The dependent claims inherit the deficiencies of the claims from which they depend.

#### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haaksman, U.S. Patent No. 5,374,820 in view of Austrian Patent Publication No. AT 000307 U1 (henceforth AT-307).

Haaksman discloses a vision aid (fig. 5 and fig. 7) in the form of telescopic spectacles with two lens systems (10 and 10') which each comprise at least one objective lens (11) and one eyepiece (12), with an autofocus means (400) which changes the focal length for sharp focusing of the lens systems according to the distance of the telescopic spectacle from the object (column 8, lines 28-39), with a means for matching the parallax (101, 111, 121 with 130, fig.6a) between the lens systems of the vision aid to the focal length which has been set according to the distance of the telescopic spectacles from an object (V1, V2), there being adjustable optical elements (11,

which is adjustable in that is moved axially) in the beam path (17, 17') of the vision aid, characterized in that the angle (not numbered, but clearly changed between V1 and V2 in fig. 5) between the beam paths (17, 17') running from the lens systems to the object can be changed using adjustable optical elements which are located in the beam path of the vision aid (fig. 5). Haaksman discloses the claimed invention except for a means for changing the magnification factor of the lens systems ("zoom"). AT-307 teaches telescopic spectacles with two lens systems (fig. 1) with a means for changing the magnification factor of the lens systems (13, 14). It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the means for changing the magnification factor of AT-307 to the system of Haaksman to provide the viewer with more flexibility and a broader range of magnifications.

11. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haaksman in view of AT-307 as applied to claim 1 above, and further in view of Kato et al., U.S. Patent No. 6,134,048.

Haaksman in view of AT-307, as applied to claim 1 above, discloses the claimed invention except wherein the optical elements can be moved transversely to the beam path in the lens systems and wherein the optical elements can be moved along straight paths. Kato et al. teaches a vision aid (figs. 1A and 1B) in the form of telescopic spectacles with two lens systems (1, 5 and 2, 6) wherein the optical elements (1 and 2) can be moved transversely to the beam path in the lens systems (column 4, lines 48-52) and wherein the optical elements can be moved along straight paths (35 and 36) or wherein the optical elements can be moved along curved paths (27 and 28, figs. 4A and 4b). It would have been obvious to one having ordinary skill in the art at the

time the invention was made to incorporate the guide bars of Kato et al. into the system of Haaksman in view of AT-307 to prevent eye strain when looking at objects at close distances (column 2, lines 34-36).

12. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haaksman in view of AT-307 as applied to claim 1 above, and further in view of Eastcott, U.S. Patent No. 5,592,331.

Haaksman in view of AT-307, as applied to claim 1 above, discloses the claimed invention except wherein the optical elements can be moved along curved paths or wherein the optical elements are arranged to be able to tilt. Eastcott teaches an optical adapter (figs. 3a and 3b) wherein the optical elements can be moved along curved paths (along curved sleeve 11) and wherein the optical elements (5) are arranged to be able to tilt (column 6, lines 13-16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate optical adapter of Eastcott into the system of Haaksman in view of At-307 to render objects positioned at same distance from the lens plane with different degrees of sharpness (column 3, lines 55-57) thereby being able to accurately point out only one object.

### *Conclusion*

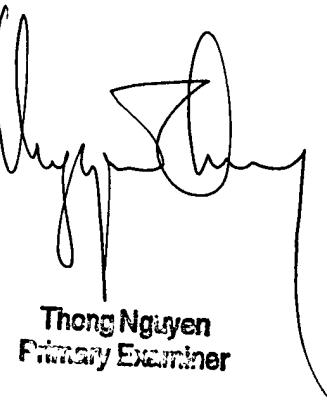
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Steinhuber, U.S. Patent No. 6,204,966 B1, discloses telescopic spectacles with adjustment devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lee Fineman whose telephone number is (703) 305-5414. The examiner can normally be reached on Monday - Friday 7:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cassandra Spyrou can be reached on (703) 308-1687. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4900.

*LAF*  
LAF  
December 30, 2002



Thong Nguyen  
Primary Examiner